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### **FINDLAW DAILY OPINION SUMMARIES U.S. 1ST CIRCUIT COURT OF APPEALS**

Immigration Law, Civil Procedure

#### **Ramirez-Matias v. Holder, No. 14-1056**

Petition for judicial review of a decision of the Board of Immigration Appeals (BIA) upholding the Immigration Judge's denial of petitioner's special rule cancellation of removal under the Nicaraguan Adjustment and Central American Relief Act and affirming the rejection of petitioner's remaining claims for relief is dismissed for want of jurisdiction, where: 1) petitioner's challenge to the way in which the agency weighed the evidence and balanced negative and positive factors is not a claim that raises a legal question, and in such circumstances, this court lacks jurisdiction to review the agency's denial of special rule cancellation of removal; and 2) this court lacks jurisdiction to review petitioner's remaining unexhausted claims.

Criminal Law & Procedure, Sentencing

#### **US v. Burgos-Figueroa, No. 13-2379**

In this single-issue sentencing appeal, defendant argues that the district court erred when it imposed a two-level sentencing enhancement reflecting the possession of dangerous weapon during a drug-trafficking conspiracy. The judgment is affirmed, where: 1) although the record contains no evidence that defendant himself ever carried a firearm, that kind of proof is not essential for a weapons enhancement under U.S.S.G. section 2D1.1(b)(1); 2) the enhancement may be based on a finding that defendant reasonably could have foreseen firearms possession by others during the conspiracy; and 3) such a finding may be premised on circumstantial evidence, and the circumstantial evidence here is sufficient to warrant application of the enhancement.

Criminal Law & Procedure, Sentencing

#### **US v. Duquette, No. 13-2055**

In this case, defendant pleaded guilty to being a felon in possession of multiple firearms in violation of 18 U.S.C. section 922(g)(1) and the Armed Career Criminal Act (ACCA), 18 U.S.C. section 924(e), and was sentenced to 15 years. Plaintiff challenges his sentence. The judgment is affirmed, where: 1) defendant's non-residential burglaries count as violent felonies under the ACCA; and 2) because defendant's sentence is reflective of the ACCA's statutory minimum and not a sentencing range, showing that his burglaries were not "crimes of violence" or that defendant is not a "career offender" for Guidelines purposes could not result in him receiving a shorter sentence than the 15 years mandated by the ACCA.

Criminal Law & Procedure, Sentencing

#### **US v. Diaz-Bermudez, No. 13-1743**

In this case, defendant pleaded guilty to one count of possessing a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. section 924(c)(1)(A) and was sentenced to 108 months. Defendant challenges his sentence. The judgment is affirmed, where: 1) though their analysis was brief, the district court did not plainly fail to consider the section 3553(a) sentencing factors; 2) the district court was permitted to consider the sincerity of defendant's explanation for his conduct, as he placed his sincerity at issue; and 3) the imposition of a sentence 48 months above the 60 months guideline sentence was substantively reasonable, as defendant's lack of sincerity in attributing his involvement in the offense to ignorance was relevant to assessing the need for deterrence and his capacity for rehabilitation, and other factors (including defendant's criminal history) combined to provide a plausible rationale for the variant sentence.

Criminal Law & Procedure, Habeas Corpus

**Cooper v. Bergeron, No. 13-1471**

In this case, petitioner was found guilty of armed robbery and armed burglary, and the state trial judge found him to be a habitual offender. Petitioner was thereafter sentenced to life in prison. Petitioner sought federal habeas relief, alleging violations of his due process rights under the Fifth and Fourteenth Amendments. Judgment of the federal district court denying petitioner's habeas petition is affirmed, where petitioner has failed to establish that he suffers illegal confinement.

Criminal Law & Procedure, Sentencing

**US v. Vazquez-Larrauri, No. 13-1061**

In this case, defendant was convicted of various drug and firearm offenses for leading a conspiracy to distribute drugs, and was sentenced to concurrent life sentences on all six counts of conviction. Defendant argues that prosecutorial misconduct and evidentiary errors warrant a new trial, and he challenges his sentence on grounds that the district court failed to make an individualized drug quantity finding and that the life sentence on the firearm count exceeded the applicable statutory maximum. The judgment is affirmed as to the convictions on all counts and as to the life sentences on the five drug counts, but remanded for a modified sentence on the one firearm count, where: 1) because, in theory, collateral review or other unpredictable events might alter someday the impact of the conviction on other counts, and because leaving in place the plainly unlawful life sentence for the firearm count could sully public perception of the proceeding, the judgment is remanded with instructions to enter a modified sentence on that count; 2) the prosecutor did not clearly or obviously vouch for the witness's credibility; 3) the prosecutor's various misstatements did not rise to plain error; 4) defendant has made no effort to show that the various alleged evidentiary errors likely affected the outcome; and 5) the district court's clear and obvious error in failing to make the individualized drug quantity finding did not affect defendant's sentence and therefore does not require reversal.

Family Law, International Law

**Mendez v. May, No. 15-1126**

In this case, the district court granted petitioner-father's petition to return his son to Argentina pursuant to the Hague Convention on the Civil Aspects of Child Abduction as implemented by the International Child Abduction Remedies Act (22 U.S.C. section 9001 et seq.). Petitioner alleges that the child's mother wrongfully removed him to the United States in February 2014. The district court's grant of the petition and order returning the child to Argentina is reversed, where: 1) the child's habitual residence lies in the United States, as the record establishes that the last shared intent of the parties was for their son to relocate permanently with his mother to the United States; and 2) the unilateral wishes of one parent are not sufficient to overcome the last settled purpose of the two parents.

Civil Procedure, Constitutional Law, Gaming Law

**Caesars Massachusetts Development Company v. Crosby, No. 14-1681**

In this case, plaintiffs were subject to an investigatory report by the Massachusetts Gaming Commission finding them unsuitable as proposed operators of a casino for which they sought a license. Plaintiffs assert claims charging denial of Fifth and Fourteenth Amendment procedural and substantive due process and equal protection of the laws by defendants, seeking withdrawal of the report and cessation of any further reliance on it by the Commission, seeking compensatory and punitive damages, and charging tortious interference with a contract. The district court dismissed the federal claims as beyond the scope of federal affordable relief and exercised its discretion to dismiss the state law claim as standing alone. Dismissal is affirmed, where: 1) plaintiffs have alleged no cognizable protected property interest said to have been infringed in violation of Fifth and Fourteenth Amendment due process; and 2) Fourteenth Amendment equal protection does not extend to redress action taken under state law authorizing the exercise of highly discretionary judgment in response to an application to license activity carrying substantial risks of commercial and social harm.